THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 12th July, 2006

W.P.No.1467 of 1999

Between:

M/s. Sreedevi Theatre, Warangal,
Rep. by its Managing Partner
Sri P.Prabhakar Rao … Petitioner

and

Commissioner for Workmen's
Compensation and Asst. Commissioner
Of Labour, Warangal-I,
Warangal. … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.1467 of 1999

ORAL ORDER:

Heard both sides.

This Writ Petition is filed being aggrieved by a docket Order dated 24-11-1998 returning I.A.No.4 of 1998 in W.C.No.54 of 1996 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Warangal (presently Assistant Commissioner of Labour-II), which was filed under Section 23 of the Workmen's Compensation Act,1923 read with Order IX Rule 13 of the Civil Procedure Code to set aside the *ex parte* Award dated 23-9-1998 in W.C.No.54 of 1996.

The said docket order dated 24-11-1998 reads as under:

> "I.A.No.4 of 1998, dated 9-10-1998 is returned for want of jurisdiction, since the entire file has been transferred to DCL/WGL."

Learned counsel for the petitioner stated that when the petitioner enquired, it was revealed that the very petition under Order IX Rule 13 of the Civil Procedure Code is not maintainable; therefore, the Commissioner for Workmen's Compensation, Warangal has no jurisdiction to entertain the same, apart from the fact that the file was transmitted to the Deputy Commissioner of Labour, Warangal for execution of the *ex parte* Award.

It is unfortunate that such a stand was taken by the authority and returned I.A.No.4 of 1998 filed under Order IX Rule 13 CPC. Learned

counsel placed reliance on Section 23 of the Workmen's Compensation Act and submitted that a petition of this nature under Order IX Rule 13 CPC is maintainable to set aside the *ex parte* Award passed by the Commissioner of Labour. In this regard, he placed reliance on a reported Judgment of this Court in **MOHD.MOINUDDIN v. COMMISSIONER OF WORKMEN'S COMPENSATION**[1] wherein it was held that the Industrial Tribunal having power to pass an order awarding compensation has also power to set aside *ex parte* order and the failure to entertain an application to set aside *ex parte* order and dispose it of on merits is unjust and improper. The same analogy is equally applicable to the case on hand also.

In the light of the above, the impugned docket order dated 24-11-1998 passed in I.A.No.4 of 1998 is set aside and the 2nd respondent is directed to entertain the application and dispose of the same on merits, as per law. Till then, the Award dated 23-9-1998 passed against the petitioner shall not be given effect to.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

12-7-2006

prk

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[1] 1995(2) ALT 437